

STATE OF MICHIGAN
COURT OF APPEALS

GLYDIA VENTER,

Plaintiff-Appellee,

v

MEIJER, INC.,

Defendant-Appellant.

UNPUBLISHED

April 25, 1997

No. 188257

Ingham Circuit Court

LC No. 93-074320-NI

Before: McDonald, P.J., and Griffin and Bandstra, JJ.

PER CURIAM.

Defendant appeals by right from a jury verdict awarding plaintiff \$216,000 plus costs and interest for damages sustained in a slip and fall that occurred at defendant's store. We affirm.

Defendant first argues that the trial court abused its discretion in denying defendant's motion for a directed verdict and its motion for judgment notwithstanding the verdict, asserting that no reasonable jury could have found that defendant was negligent. We disagree. The sole element in dispute was whether defendant breached its duty to warn plaintiff of a potentially hazardous condition created by an employee who was wet-mopping the floor. The record reveals that there was contradictory testimony presented as to whether defendant placed a warning cone or placed it improperly so that the warning was inadequate under the circumstances. Plaintiff testified she did not see a cone. The other witnesses called by plaintiff, all of whom were employed by defendant, testified that they saw a warning cone in the area where plaintiff fell before the fall, but gave varying descriptions of its placement after the fall and one witness could not remember seeing the cone at all after plaintiff fell. Where reasonable minds could differ as to whether plaintiff had been adequately warned of a dangerous condition based on the evidence presented at the close of plaintiff's proofs, the trial court did not abuse its discretion in denying defendant's motion for a directed verdict. *Alar v Mercy Memorial Hospital*, 208 Mich App 518, 524; 529 NW2d 318 (1995).

Following the denial of the directed verdict, James Brotherton testified that he saw plaintiff fall and that as she fell, her foot actually kicked the warning cone away from her body so that it rolled away from her. Yet, Cheryl Miller said that she did not see a cone near plaintiff after she fell. Another

witness testified that she remembered seeing a cone after plaintiff fell, but that it was upright and not on its side as James Brotherton had testified. With respect to the issue of whether defendant's placement of the cone was adequate to warn plaintiff, the evidence was equally weighted between the two sides and presented a credibility question. If there is conflicting evidence, the question of credibility should be left for the jury. *Rossien v Berry*, 305 Mich 693, 701; 9 NW2d 895 (1943). Under the circumstances, the trial court did not abuse its discretion in denying defendant's motion for JNOV where there was not insufficient evidence to create an issue for the jury; nor, did the court err in denying defendant a new trial where the verdict was not against the overwhelming great weight of the evidence. *Wilson v General Motors Corp*, 183 Mich App 21, 36; 454 NW2d 405 (1990).

Defendant also argues that the trial court erred by refusing to modify SJI2d 19.04 to delete a reference to plaintiff being entitled to presume that the aiseways of defendant's store would be reasonably safe where defendant showed that it had warned of a potentially wet floor. We disagree. Although the trial court would not modify the standard jury instruction as defendant requested, it offered to include a statement that plaintiff would be entitled to presume that the aisles would be reasonably safe or that defendant would warn of hidden defects. Defendant rejected the trial court's offer and withdrew its request for SJI2d 19.04. The court's proposed modification of the standard jury instruction accurately reflected the state of the law as it applied in this case. See *Riddle v McLouth Steele Products*, 440 Mich 85, 90, 92; 485 NW2d 676 (1992). Therefore, the trial court did not abuse its discretion in determining that the instruction applied. *Lamson v Martin*, 182 Mich App 233, 235; 451 NW2d 601 (1990).

Judgment for plaintiff affirmed.

/s/ Gary R. McDonald
/s/ Richard Allen Griffin
/s/ Richard A. Bandstra